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7 **UNITED STATES DISTRICT COURT**
8 **CENTRAL DISTRICT OF CALIFORNIA**
9

10 KORTTNEY ELLIOTT,

11 Plaintiff,

12 vs.

13
14 R&B TEA ROSEMEAD; DIAMOND
15 HEAD PROPERTY, LLC; and DOES 1
through 10,
16

17 Defendants.
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21
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23
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Case No.:

COMPLAINT FOR INJUNCTIVE
RELIEF AND DAMAGES FOR
VIOLATION OF:

1. AMERICANS WITH DISABILITIES
ACT, 42 U.S.C. §12131 et seq.;
2. CALIFORNIA'S UNRUH CIVIL
RIGHTS ACT, CAL CIV. CODE §§ 51 -
52 et seq.;
3. CALIFORNIA'S DISABLED
PERSONS ACT, CAL CIV. CODE §54 et
seq.
4. CALIFORNIA HEALTH & SAFETY
CODE § 19955, et seq.
5. NEGLIGENCE

25
26 Plaintiff KORTTNEY ELLIOTT ("Plaintiff") complains of Defendants R&B TEA
27 ROSEMEAD; DIAMOND HEAD PROPERTY, LLC; and DOES 1 through 10
28 ("Defendants") and alleges as follows:

PARTIES

1
2 1. Plaintiff is a California resident with a physical disability. Plaintiff suffers
3 from hemiplegia, is substantially limited in her ability to walk and requires the use of a
4 wheelchair at all times when traveling in public.

5 2. Defendants are, or were at the time of the incident, the real property owners,
6 business operators, lessors and/or lessees of the real property for R&B TEA
7 ROSEMEAD (“Business”) located at or about 8526 Valley Blvd., Rosemead, California.

8 3. The true names and capacities, whether individual, corporate, associate or
9 otherwise of Defendant DOES 1 to 10, and each of them, are unknown to Plaintiff, who
10 therefore sues said Defendants by such fictitious names. Plaintiff will ask leave of Court
11 to amend this Complaint when the true names and capacities have been ascertained.
12 Plaintiff is informed and believes and, based thereon, alleges that each such fictitiously
13 named Defendants are responsible in some manner, and therefore, liable to Plaintiff for
14 the acts herein alleged.

15 4. Plaintiff is informed and believes, and thereon alleges that, at all relevant
16 times, each of the Defendants was the agent, employee, or alter-ego of each of the other
17 Defendants, and/or was acting in concert with each of the other Defendants, and in doing
18 the things alleged herein was acting with the knowledge and consent of the other
19 Defendants and within the course and scope of such agency or employment relationship.

20 5. Whenever and wherever reference is made in this Complaint to any act or
21 failure to act by a defendant or Defendants, such allegations and references shall also be
22 deemed to mean the acts and failures to act of each Defendant acting individually, jointly
23 and severally.

24 **JURISDICTION AND VENUE**

25 6. The Court has jurisdiction of this action pursuant to 28 USC §§ 1331 and
26 1343 for violation of the Americans with Disabilities Act of 1990, (42 USC §12101, *et*
27 *seq.*)
28

1 her knowledge of these violations prevents her from returning until the barriers are
2 removed.

3 15. Based on the violations, Plaintiff alleges, on information and belief, that
4 there are additional barriers to accessibility at the Business after further site inspection.
5 Plaintiff seeks to have all barriers related to her disability remedied. *See Doran v. 7-
6 Eleven, Inc.* 524 F.3d 1034 (9th Cir. 2008).

7 16. In addition, Plaintiff alleges, on information and belief, that Defendants
8 knew that particular barriers render the Business inaccessible, violate state and federal
9 law, and interfere with access for the physically disabled.

10 17. At all relevant times, Defendants had and still have control and dominion
11 over the conditions at this location and had and still have the financial resources to
12 remove these barriers without much difficulty or expenses to make the Business
13 accessible to the physically disabled in compliance with ADDAG and Title 24
14 regulations. Defendants have not removed such barriers and have not modified the
15 Business to conform to accessibility regulations.

16 **FIRST CAUSE OF ACTION**

17 **VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990**

18 18. Plaintiff incorporates by reference each of the allegations in all prior
19 paragraphs in this complaint.

20 19. Under the Americans with Disabilities Act of 1990 (“ADA”), no individual
21 shall be discriminated against on the basis of disability in the full and equal enjoyment of
22 the goods, services, facilities, privileges, advantages, or accommodations of any place of
23 public accommodation by any person who owns, leases, or leases to, or operates a place
24 of public accommodation. *See* 42 U.S.C. § 12182(a).

25 20. Discrimination, *inter alia*, includes:

- 26 a. A failure to make reasonable modification in policies, practices, or
- 27 procedures, when such modifications are necessary to afford such
- 28 goods, services, facilities, privileges, advantages, or accommodations

1 to individuals with disabilities, unless the entity can demonstrate that
2 making such modifications would fundamentally alter the nature of
3 such goods, services, facilities, privileges, advantages, or
4 accommodations. 42 U.S.C. § 12182(b)(2)(A)(ii).

5 b. A failure to take such steps as may be necessary to ensure that no
6 individual with a disability is excluded, denied services, segregated or
7 otherwise treated differently than other individuals because of the
8 absence of auxiliary aids and services, unless the entity can
9 demonstrate that taking such steps would fundamentally alter the
10 nature of the good, service, facility, privilege, advantage, or
11 accommodation being offered or would result in an undue burden. 42
12 U.S.C. § 12182(b)(2)(A)(iii).

13 c. A failure to remove architectural barriers, and communication barriers
14 that are structural in nature, in existing facilities, and transportation
15 barriers in existing vehicles and rail passenger cars used by an
16 establishment for transporting individuals (not including barriers that
17 can only be removed through the retrofitting of vehicles or rail
18 passenger cars by the installation of a hydraulic or other lift), where
19 such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv).

20 d. A failure to make alterations in such a manner that, to the maximum
21 extent feasible, the altered portions of the facility are readily
22 accessible to and usable by individuals with disabilities, including
23 individuals who use wheelchairs or to ensure that, to the maximum
24 extent feasible, the path of travel to the altered area and the
25 bathrooms, telephones, and drinking fountains serving the altered
26 area, are readily accessible to and usable by individuals with
27 disabilities where such alterations to the path or travel or the
28 bathrooms, telephones, and drinking fountains serving the altered

1 area are not disproportionate to the overall alterations in terms of cost
2 and scope. 42 U.S.C. § 12183(a)(2).

3 21. Toilet flush controls shall be hand operated or automatic. Hand operated
4 flush controls shall comply with 309. Flush controls shall be located on the open side of
5 the water closet. 2010 ADA Standards § 604.6.

6 22. Here, Defendants failed to install a proper flush control as the one provided
7 was not on the open side of the toilet.

8 23. Knee clearance that is at least 27 in (685 mm) high, 30 in (760 mm) wide,
9 and 19 in (485 mm) deep shall be provided underneath sinks. 1991 ADA Standards §
10 4.24.3.

11 24. Here, Defendants failed to provide adequate knee clearance underneath the
12 sink.

13 25. Mirrors shall be mounted with the bottom edge of the reflecting surface no
14 higher than 40 in (1015 mm) above the finish floor. 1991 ADA Standards § 4.19.6.

15 26. Here, Defendants failed to install the compliant mirror in violation of ADA
16 Standards as it was much higher than 40 inches in height above the finish floor.

17 27. A public accommodation shall maintain in operable working condition those
18 features of facilities and equipment that are required to be readily accessible to and usable
19 by persons with disabilities by the Act or this part. 28 C.F.R. 35.211(a).

20 28. By failing to maintain the facility to be readily accessible and usable by
21 Plaintiff, Defendants are in violation of Plaintiff's rights under the ADA and its related
22 regulations.

23 29. The Business has denied and continues to deny full and equal access to
24 Plaintiff and to other people with disabilities. Plaintiff has been and will continue to be
25 discriminated against due to the lack of accessible facilities, and therefore, seeks
26 injunctive relief to alter facilities to make such facilities readily accessible to and usable
27 by individuals with disabilities.

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SECOND CAUSE OF ACTION

VIOLATION OF THE UNRUH CIVIL RIGHTS ACT

30. Plaintiff incorporates by reference each of the allegations in all prior paragraphs in this complaint.

31. California Civil Code § 51 states, “All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.”

32. California Civil Code § 52 states, “Whoever denies, aids or incites a denial, or make any discrimination or distinction contrary to Section 51, 51.5, or 51.6, is liable for each and every offense for the actual damages, and any amount that may be determined by a jury, or a court sitting without a jury, up to a maximum of three times the amount of actual damage but in no case less than four thousand dollars (\$4,000) and any attorney’s fees that may be determined by the court in addition thereto, suffered by any person denied the rights provided in Section 51, 51.5, or 51.6.

33. California Civil Code § 51(f) specifies, “a violation of the right of any individual under federal Americans with Disabilities Act of 1990 (Public Law 101-336) shall also constitute a violation of this section.”

34. The actions and omissions of Defendants alleged herein constitute a denial of full and equal accommodation, advantages, facilities, privileges, or services by physically disabled persons within the meaning of California Civil Code §§ 51 and 52. Defendants have discriminated against Plaintiff in violation of California Civil Code §§ 51 and 52.

35. The violations of the Unruh Civil Rights Act caused Plaintiff to experience difficulty, discomfort, or embarrassment. The Defendants are also liable for statutory damages as specified in California Civil Code §55.56(a)-(c).

THIRD CAUSE OF ACTION

VIOLATION OF CALIFORNIA DISABLED PERSONS ACT

36. Plaintiff incorporates by reference each of the allegations in all prior paragraphs in this complaint.

37. California Civil Code § 54.1(a) states, “Individuals with disabilities shall be entitled to full and equal access, as other members of the general public, to accommodations, advantages, facilities, medical facilities, including hospitals, clinics, and physicians’ offices, and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motorbuses, streetcars, boats, or any other public conveyances or modes of transportation (whether private, public, franchised, licensed, contracted, or otherwise provided), telephone facilities, adoption agencies, private schools, hotels, loading places, places of public accommodations, amusement, or resort, and other places in which the general public is invited, subject only to the conditions and limitations established by law, or state or federal regulation, and applicable alike to all persons.

38. California Civil Code § 54.3(a) states, “Any person or persons, firm or corporation who denies or interferes with admittance to or enjoyment of public facilities as specified in Sections 54 and 54.1 or otherwise interferes with the rights of an individual with a disability under Sections 54, 54.1 and 54.2 is liable for each offense for the actual damages, and any amount as may be determined by a jury, or a court sitting without a jury, up to a maximum of three times the amount of actual damages but in no case less than one thousand dollars (\$1,000) and any attorney’s fees that may be determined by the court in addition thereto, suffered by any person denied the rights provided in Section 54, 54.1, and 54.2.

39. California Civil Code § 54(d) specifies, “a violation of the right of an individual under Americans with Disabilities Act of 1990 (Public Law 101-336) also constitute a violation of this section, and nothing in this section shall be construed to limit the access of any person in violation of that act.

1 40. The actions and omissions of Defendants alleged herein constitute a denial
 2 of full and equal accommodation, advantages, and facilities by physically disabled
 3 persons within the meaning of California Civil Code § 54. Defendants have
 4 discriminated against Plaintiff in violation of California Civil Code § 54.

5 41. The violations of the California Disabled Persons Act caused Plaintiff to
 6 experience difficulty, discomfort, and embarrassment. The Defendants are also liable for
 7 statutory damages as specified in California Civil Code §55.56(a)-(c).

8 **FOURTH CAUSE OF ACTION**

9 **CALIFORNIA HEALTH & SAFETY CODE § 19955, et seq.**

10 42. Plaintiff incorporates by reference each of the allegations in all prior
 11 paragraphs in this complaint.

12 43. Plaintiff and other similar physically disabled persons who require the use of
 13 a wheelchair are unable to use public facilities on a “full and equal” basis unless each
 14 such facility is in compliance with the provisions of California Health & Safety Code §
 15 19955 et seq. Plaintiff is a member of the public whose rights are protected by the
 16 provisions of California Health & Safety Code § 19955 et seq.

17 44. The purpose of California Health & Safety Code § 1995 et seq. is to ensure
 18 that public accommodations or facilities constructed in this state with private funds
 19 adhere to the provisions of Chapter 7 (commencing with Section 4450) of Division 5 of
 20 Title 1 of the Government Code. The code relating to such public accommodations also
 21 require that “when sanitary facilities are made available for the public, clients, or
 22 employees in these stations, centers, or buildings, they shall be made available for
 23 persons with disabilities.

24 45. Title II of the ADA holds as a “general rule” that no individual shall be
 25 discriminated against on the basis of disability in the full and equal enjoyment of goods
 26 (or use), services, facilities, privileges, and accommodations offered by any person who
 27 owns, operates, or leases a place of public accommodation. 42 U.S.C. § 12182(a).
 28 Further, each and every violation of the ADA also constitutes a separate and distinct

1 violation of California Civil Code §§ 54(c) and 54.1(d), thus independently justifying an
2 award of damages and injunctive relief pursuant to California law, including but not
3 limited to Civil Code § 54.3 and Business and Professions Code § 17200, et seq.

4 **FIFTH CAUSE OF ACTION**

5 **NEGLIGENCE**

6 46. Plaintiff incorporates by reference each of the allegations in all prior
7 paragraphs in this complaint.

8 47. Defendants have a general duty and a duty under the ADA, Unruh Civil
9 Rights Act and California Disabled Persons Act to provide safe and accessible facilities
10 to the Plaintiff.

11 48. Defendants breached their duty of care by violating the provisions of ADA,
12 Unruh Civil Rights Act and California Disabled Persons Act.

13 49. As a direct and proximate result of Defendants' negligent conduct, Plaintiff
14 has suffered damages.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff respectfully prays for relief and judgment against
17 Defendants as follows:

18 1. For preliminary and permanent injunction directing Defendants to comply
19 with the Americans with Disability Act and the Unruh Civil Rights Act;

20 2. Award of all appropriate damages, including but not limited to statutory
21 damages, general damages and treble damages in amounts, according to proof;

22 3. Award of all reasonable restitution for Defendants' unfair competition
23 practices;

24 4. Reasonable attorney's fees, litigation expenses, and costs of suit in this
25 action;

26 5. Prejudgment interest pursuant to California Civil Code § 3291; and

27 6. Such other and further relief as the Court deems just and proper.

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DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff hereby demands a trial by jury on all issues so triable.

Dated: December 7, 2022

SO. CAL. EQUAL ACCESS GROUP

By: /s/ Jason J. Kim
Jason J. Kim, Esq.
Attorneys for Plaintiff